

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANN MARIE LEBER,

Defendant-Appellee.

UNPUBLISHED

August 3, 1999

No. 211786

Oakland Circuit Court

LC No. 97-DA 673-AR

Before: Talbot, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

This is a prosecutor's appeal from an order of the circuit court on appeal from an order of the district court. We reverse and remand.

I

Defendant has had numerous drinking and driving offenses, culminating in a 1997 charge of operating under the influence of intoxicating liquor, third offense (OUIL third), MCL 257.625(7)(d); MSA 9.2325(7)(d). Seeking to avoid the sentence enhancement consequences of the felony charge, defendant attempted to eliminate one of the underlying OUIL convictions by moving in the district court to set aside her 1993 guilty plea in that case. The earlier charge was prosecuted pursuant to township ordinance, not state statute, and the township attorney opposed defendant's motion to withdraw. The district judge found that defendant's plea was not knowingly and intelligently made because the court had misstated the driver's license sanctions applicable on conviction. Accordingly, the district court set aside defendant's guilty plea and reinstated the charge. The township attorney determined that under then-prevailing law, an appeal to circuit court likely would be unsuccessful; therefore, he accepted the decision of the district court with the intent to re-prosecute the charge.

The decision of the district court to grant defendant's motion to withdraw the earlier plea meant that the pending felony charge of OUIL third was no longer sustainable.¹ The county prosecutor's office thus sought to inject itself in the district court plea-withdrawal matter. Defendant objected, primarily on the basis that the prosecutor lacked standing to intervene in a township prosecution. The

district court determined that the prosecutor had standing, but rejected its argument² that defendant's motion to withdraw the plea be denied.

The prosecutor appealed to circuit court and defendant cross-appealed. The circuit court ruled both on defendant's claim that the prosecutor lacked standing, and on the merits of the prosecutor's claim of error in granting the motion to withdraw, ruling against the prosecutor as to both issues. That is, the circuit court agreed that the district court plea was fatally defective and ruled that, in any event, the prosecutor lacked standing to challenge the district court's decision. The prosecutor's application for leave to appeal to this Court was granted. *People v Leber*, unpublished order of the Court of Appeals, issued July 23, 1998 (Docket No. 211786).³

II

We initially note that the county prosecutor may well lack standing to intervene or take part in a challenge to a prior conviction to which the prosecutor was not a party. We further recognize, however, that the doctrine of standing is generally one of self-imposed judicial restraint, and is thus to be applied with great flexibility. See, e.g., *Detroit Fire Fighters v Detroit*, 449 Mich 629, 638 (Weaver, J.), 649 (Riley, J.), 537 NW2d 436 (1995); *Gilliard v Dep't of Social Services*, 135 Mich App 579, 584; 354 NW2d 263 (1982); *White Lake Improvement Ass'n v City of Whitehall*, 22 Mich App 262, 284 n 35; 177 NW2d 473 (1970). Accordingly, despite our reservations regarding the prosecutor's standing, we prefer to address the merits of the substantive issue before us in the interest of justice. MCR 7.216(A).

Our Supreme Court has recently held that a long-delayed attack on a plea-based conviction may be deemed collateral. *People v Ward*, 459 Mich 602; 594 NW2d 47 (1999). In *Ward*, the defendant was charged with OUIL third and thereafter attempted to withdraw a guilty plea made approximately fourteen months earlier to OUIL second, MCL 257.625(7)(b); MSA 9.2325(7)(b). The Court acknowledged that the defendant's request to withdraw his plea was "technically" a direct attack on his previous OUIL second conviction, and that there is currently no time limit on filing a late appeal from a plea-based conviction in the district court. *Ward, supra*, at 610.⁴ Nonetheless, the Court held that where the defendant was represented by retained counsel, and was motivated solely by subsequent sentencing concerns, the "defendant's ability to directly attack his OUIL 2d conviction was foreclosed when he was arrested and charged with OUIL 3d." *Id.* at 612.

In *Ward*, the defendant's delay of fourteen months rendered his motion to withdraw his guilty plea collateral. The delay in the present case is well over three years. As the Court stated in *Ward, supra*:

[P]ermitting a defendant charged with OUIL 3d to collaterally attack a prior plea-based OUIL conviction several years later would in effect grant to a defendant a license to lie in the weeds, voluntarily enter a guilty plea, accept the consequences thereof, and then (when once again convicted of driving while intoxicated) attempt to avoid the effect of his prior conviction through a legal artifice.'" [*Id.* at 612 (citations and internal quotations omitted).]

We thus reverse the circuit court's order affirming the district court's grant of defendant's motion to withdraw her guilty plea, and remand to the district court. On remand, the district court shall reconsider defendant's motion in light of our Supreme Court's decision in *Ward, supra*.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ Janet T. Neff

/s/ Michael R. Smolenski

¹ Indeed, defendant successfully moved to reduce the charge to OUIL second and the matter was remanded to district court for further proceedings.

² The prosecutor's argument was different from the one made by the township attorney when the motion was first argued.

³ Stays were entered in both the district court and circuit court cases pending the outcome of this appeal.

⁴ On the same day that it issued the opinion in *Ward, supra*, the Supreme Court published for comment proposed amendments of MCR 6.610 and 7.101 "to clarify the time limits for challenging plea-based convictions in district court." *Id.* at 614.